

STATEMENT OF SENATOR JOHN McCAIN
CHAIRMAN, SENATE COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMUNICATIONS SUBCOMMITTEE HEARING
ON FCC REAUTHORIZATION
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Good morning. I would like to thank Chairman Burns for indulging my schedule and commend him for holding this hearing. I thank Chairman Kennard and the four Commissioners for their attendance this morning.

I would first like to give you my perspective on the most immediate problem the Commission faces right now: what to do about the severely-flawed schools and libraries program.

At the outset, let me make it clear that I am in favor of bringing advanced Internet-based learning technologies to our nation's schools, particularly those that are most disadvantaged. If implemented correctly, advanced learning technologies can play an important part in reviving our educational system and in helping young people acquire knowledge and skills that the system is failing to give them now.

But just because I support the *goal* of wiring our schools and libraries doesn't mean I support the *program* concocted by the prior Commission. I don't.

Any dispassionate assessment of the current e-rate program leads to the conclusion that the prior Commission made a series of bad mistakes in the choices it made to implement the program. And it's your predecessor's mistakes, Mr. Kennard, that haunt your Commission.

In implementing the schools and libraries program the prior Commission made a series of highly controversial decisions that many in Congress stated were flatly inconsistent with the 1996 Act, and that many, both inside and outside Congress, warned would result in higher consumer phone bills.

Put aside for a moment the debates over whether Congress intended the Commission to create a grant program, or whether inside wiring was meant to be included, or whether long-distance carriers are fully passing through access charge savings to their customers. These are important issues, to be sure. But the point I would make is that they have only *become* important thanks to the mistakes made by your predecessor.

At least one provision of the 1996 Telecom Act could not be written more clearly --

and, ironically, it's the one the prior Commission chose to ignore in implementing the schools and libraries program. Section 254 (a)(2) of the Act unambiguously states that:

The Commission ***shall*** initiate ***a single proceeding*** to implement the recommendations of the [Universal Service Fund] Joint Board and ***shall complete such proceeding*** within 15 months after the date of enactment of [the Act].

In case the meaning of this sentence was not clear enough, the legislative history specifies that this single proceeding requirement was to apply to any universal service subsidy "continued or created" under Section 254 of the Act.

In other words, Congress expected, and the statute directed, the Commission to restructure and "size" the *entire* universal service subsidy program --that is, the rural and high-cost programs, as well as the schools and libraries program --all together at one time.

The reason for doing so is obvious. Only in that way would the Commission have an accurate grasp of the total amount of subsidy funding telecommunications carriers would have to contribute, what corresponding adjustments would be called for in the Commission's access charge, price caps, and other rules, and what impact these changes would have on the rates paid by consumers. Simple common sense and a basic grasp of telecommunications industry economics is sufficient to show that piecemeal resolution of these integrated issues would unavoidably compromise the fair treatment to which all of the affected parties are entitled, and would fail to safeguard consumers against unforeseen rate increases.

When published reports indicated that the former Commission intended to flout this clear statutory directive by expediting the creation of the new schools and libraries program before it resolving all the other related issues, Chairman Burns and I called their attention to the problems that would ensue. We reminded then-Chairman Hundt that

any attempt by the Commission to implement ***one portion*** of universal service funding, without coherently and comprehensively implementing ***all parts*** of it, will not be economically rational, will unavoidably discriminate against some companies and subscribers, and will therefore fail to comply with the clear and unmistakable

terms of the statute.

With the serene assurance of Chairman Hundt that long-distance rates would not go up and might even fall, the former Commission chose to disregard the statute, the legislative history, and this last Congressional warning by expediting the creation of the schools and libraries program.

And its bad choices didn't end there. It chose to decree that the program would be accomplished by the year 2000, and to balloon the size of the fund to \$2.25 billion to include deep discounts for inside wiring, high-speed routers, and a host of other costly add-ons. It chose not to give our neediest schools a priority claim on these funds. It chose to establish a redundant, expensive and illegal corporate bureaucracy to administer the fund. It chose to put an unqualified individual in charge of that bureaucracy, at a salary equal to the President's. It chose to start the application process without having any credible way of assuring that subsidies would be used to reimburse only the reasonable cost of eligible services. And above all, it chose to ignore expert advice that it not make *any* of those bad choices.

The result was inevitable. In its zeal to create the program in its own image and get it up and running, the prior Commission threw law, economics, and common sense out the window. All this accomplished was to set the program up to fail.

This Commission must now make the unenviable but unavoidable decision to re-size and restructure the program sensibly, in a way that insures that it will not significantly add to the other cost increases that will result from implementation of the Telecom Act.

If there was ever a program that demanded some sober revisionist thinking, this is it. I urge you to follow what the prior Chairman claimed as his mantra, but which he obviously failed to follow when it came to setting up the schools and libraries program: read the law, study the economics, and do the right thing. Do what is necessary to fix this defective program, and do it quickly.

Let me turn briefly to another subject. All the attention focused of late on the schools and libraries program has tended to distract us from the traditional concerns voiced at other FCC reauthorization hearings --concerns about how efficiently the agency is doing its job, where its performance is defective, and what needs to be done to improve things. That's unfortunate, because the Commission is, in my judgment, badly in need of some reorientation and restructuring.

It is, for example, maddening to me to look at how the Commission allocates its resources. Until its deficiencies became too big to hide, the schools and libraries

program clicked right along -- but that's about the only thing that did. Meantime, the rest of the Commission's day-to-day work has piled up and become subject to inordinate delays.

To be fair, the Commission's time has not been totally monopolized on the schools and libraries program. It evidently has plenty of mass media staff and resources available to think up new regulatory initiatives like free political time, digital channel public interest obligations, and how to duplicate the work of the Justice Department on radio station deals.

But such creativity comes at a price. In its first six months this Commission has issued only 22 mass media decisions -- fewer than half the 51 mass media decisions issued in the first six months of the prior Commission. And *The New York Times* reported just yesterday that Commissioner Ness confessed herself "really taken aback" when she learned that the first digital TV sets wouldn't be capable of receiving high-definition TV programming transmitted over cable because no standard has been set for the equipment to connect them. Commissioner Ness observed --rather mildly, I thought, under the circumstances --that she was surprised that had been allowed to happen. Where, one might ask, had the Cable Services Bureau been all this time? Not working overtime constraining cable rate increases, that's for sure.

Let me hasten to add that I'm *not* suggesting that I want this Commission to uncork a jetstream of decisions adopting new regulations. Quite the contrary. But, to paraphrase Winston Churchill, as things stand now, never have so many worked so hard, to produce so little, for so few.

None of this can be chalked up to insufficient staff resources. The Commission has considerable resources; they're just not allocated efficiently. For example, the Chief of the Wireless Telecommunications Bureau now has *sixteen* people, including several deputies, associate deputies, a senior engineer, a senior economist, and some senior lawyers, working in his immediate office *alone*. This large front-office cadre has managed to produce a grand total of 15 items during the first six months of Chairman Kennard's tenure -- less than one item per front office employee.

Senior staff growth has become the rule in most of the Commission's other Bureaus and Offices as well. It's therefore not surprising that the *average* FCC employee now makes substantially more than many other federal employees -- over \$74,000 per year, according to a recent FCC estimate, compared to \$46,000 at DOJ and \$58,000 at the SEC.

"Reinventing government" is a trendy topic these days, and I can think of no more worthy object of reinvention than the FCC. Not unlike the schools and libraries

program, the Commission needs to have its priorities adjusted, its excess tonnage trimmed, and its functions realigned.

Because there are fewer than 30 legislative days remaining in this session, we will not be able to complete the process this session. However, the Commerce Committee's first priority next session will be enactment of legislation to reauthorize, and restructure, the FCC. Chairman Burns and I will work together to revamp the Commission's functions and staffing. At the beginning of the next session, we will introduce legislation that will change the way the FCC does business. And where restructuring is insufficient to cure a perceived problem, I want to put my colleagues and the FCC on notice that I fully intend to use the reauthorization process to amend the dysfunctional parts of the 1996 Telecom Act, which is not working the way its supporters intended.